

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

THEODORE FLANAGAN

§

VS.

§

CIVIL ACTION NO. 1:09cv883

BILLY EDWARDS, ET AL

§

MEMORANDUM OPINION

Theodore Flanagan, an inmate incarcerated at the Stiles Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this lawsuit. As plaintiff seeks leave to proceed with this lawsuit on an *in forma pauperis* basis.

Discussion

Title 28 U.S.C. § 1915(g) prohibits prisoners from repeatedly filing frivolous or malicious complaints. Section 1915(g) provides as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action [*in forma pauperis*] ... if the prisoner has, on three or more occasions ... brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Prior to the date on which plaintiff filed this complaint, courts had dismissed three lawsuits and one appeal filed by

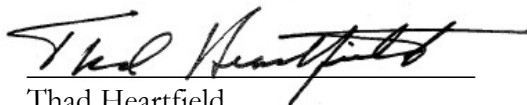
plaintiff as frivolous.¹ As a result, Section 1915(g) is applicable.

While plaintiff complains that excessive use was used against approximately 10 days before he filed his lawsuit, he does not state he was subsequently threatened with harm. As a result, his allegations do not demonstrate he was in "imminent danger of serious physical injury" on the date his complaint was filed. Section 1915(g) therefore bars plaintiff from proceeding with this action on an *in forma pauperis* basis. This case will, accordingly, be dismissed.

Conclusion

For the reasons set forth above, this lawsuit will be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g). An appropriate final judgment shall be entered.

SIGNED this the **3** day of **March, 2010**.


Thad Heartfield
United States District Judge

¹ *Flanagan v. Dretke*, No. 9:03cv172 (E.D. Tex.) (dismissed as frivolous), *aff'd*, No. 03-41389 (appeal dismissed as frivolous); *Flanagan v. Nacogdoches County Jail*, (E.D. Tex.) (dismissed as frivolous); *Flanagan v. Buchmeyer*, No. 7:02cv274 (N.D. Tex.) (dismissed as frivolous).